

REMARKS

Claims 3-5, 7-19 and 20-25 remain in the case. Claim 3 is amended (and as discussed during the Examiner Interview held October 25, 2005, between Attorney Burns and Examiner Chiesa) to include further limitation(s), and Claims 20, 22 and 23 are amended per the Examiner's recommendation in the Final Office Action. Favorable reconsideration of this application in view of the foregoing amendments and following remarks is respectfully requested.

Claim Objections / Conditional Allowance:

Claims 5 and 22 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 5:

In reflection of currently amended Claim 22, Application chooses not to pursue the recommended amendment of Claim 5 made in the Final Office Action and instead chooses to pursue an amended base Claim 3 as discussed and agreed to during the Examiner Interview.

Claim 22:

Claim 22 is currently amended without prejudice to include the limitations of original Claim 21 and previously amended independent Claim 20.

Consequently, Claim 22 is now in a condition for allowance.

Claims 20 and 23 were rejected as described below, however, they were also conditionally allowed if applicant chooses to amend with further limitations as recommended by the Examiner.

Claims 20-21:

Claim 20 is amended without prejudice per the Examiner recommendation, hence, Claim 20 and dependent Claim 21 are believed to be in a condition for allowance.

Claims 23-24:

Claim 23 was rejected but would be allowed if the limitations "said reference passage comprising a reference nozzle" and "when said throttling choke valve moves toward said reference nozzle" were added to the claim.

Claim 23 is so amended as recommended by the Examiner, hence, Claim 23 and dependent Claim 24 are now in a condition for allowance.

Claim Rejections - 35 USC §102:

Claims 3, 20, 21, 23 and 24 were rejected under 35 USC §102(b) as being anticipated by S&W, German Patent No. 19809473. The Applicant respectfully conforms in-part without prejudice by amending Claims 20 and 23 per Examiner recommendation, and by amending Claim 3 to include further limitations that are supported by the specification and are such that the Applicant believes a new search is not required.

Claims 3-5:

Base Claim 3 is currently amended to limit the bypass passage (80) to a "dry" bypass passage (i.e. no flow of fuel). Moreover, Claim 3 is further limited to a charge forming apparatus (10) that does not have a fuel idle circuit at the downstream/outlet region (28). During the October 25, 2005, Examiner Interview it was agreed this would make Claim 3 allowable.

Although passage portion (30) of the alleged bypass passage of S&W '473 may well be dry, passage portion (27) is not and instead acts as part of a fuel idle circuit at the downstream region. More specifically, when the alleged throttling choke valve (12) is closed, passage portion (30) is at near atmospheric pressure, channel (25) senses a high vacuum that pulls the diaphragm (21) upward and pivots arm (23) to close the fuel

metering chamber (18) at valve head (20). The atmospheric pressure fuel supply passage (19) is thus isolated from the fuel metering chamber (19). All fuel necessary for idling must then flow from the fuel supply, through aperture (28), through passage portion (27) and into the downstream region of the fuel-and-air mixing passage.

Because the S&W '473 reference does not have a dry bypass passage communicating directly between the upstream and downstream regions, and also requires a downstream idling circuit that utilizes passage portions (30, 20) to work and Claim 3 does not, Claim 3 as currently amended and dependent Claims 4-5 of the present application are not anticipated by the S&W '473 reference under USC §102(b).

Claim Rejections - 35 USC §103:

Claim 4 has been rejected under 35 U.S.C. §103(a) as being unpatentable over German Patent No. 19809473, to S&W, in view of U.S. Patent No. 4,931,226, to Ishii. The Applicant respectfully traverses this rejection.

In regards to dependent Claims 4-5, because base Claim 3 is patentable, dependent Claims 4-5 are non-obvious and patentable. If an independent claim is non-obvious under 35 U.S.C. §103, then any claim depending therefrom is non-obvious, In re Fine, 837 F.2d 1071, 5USPQ2d 1596 (Fed. Cir. 1988).

Summary:

Please reconsider and allow further Claims 3-5 and 20-24 in view of the above amendments and remarks.

Enclosed is a check in the amount of \$200.00, submitted to cover the fee for an additional independent claim. Moreover, the Commissioner is hereby authorized to charge any deficiencies, or credit any overpayment associated with this communication to Deposit Account No. 50-0852.

Respectfully submitted,

REISING, ETHINGTON, BARNES,
KISSELLE, P.C.

A handwritten signature in black ink, appearing to read 'David A. Burns', is written over a horizontal line.

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